

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of:

Eligible Services List
For Funding Year 2009

Schools and Libraries Universal
Support Mechanism

FCC 08-180
CC Docket No. 02-6

COMMENTS OF THE E-RATE SERVICE PROVIDERS ASSOCIATION

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SUMMARY

The E-rate Service Providers Association (“ESPA”) respectfully submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Public Notice regarding the draft Eligible Services List (“ESL”) for the Schools and Libraries Universal Service Mechanism. The E-rate Service Providers Association (“ESPA”) is a trade association serving the interests of the E-rate Service Provider community. ESPA’s purpose is to promote the E-rate Program as a means to support the delivery of advanced telecommunications and information services to our nation’s schools and libraries. ESPA’s goals are to provide Transparency, Predictability and Due Process in the program. ESPA, in most cases, supports the changes proposed. ESPA is providing additional comments in the specific areas listed below.

- Email Archiving
- Intranet Web Hosting
- Video On-Demand Servers
- Voice over Internet Protocol (VoIP) Software User Licenses

I. INTRODUCTION

The FCC's Public Notice indicates that this proceeding is "limited to determining what services are eligible under the Commission's current rules; it is not intended to be a vehicle for changing any eligibility rules." While ESPA has attempted to limit its comments to meet this requirement; it also provides additional comments that focus on certain areas that could benefit from more clarity, such as basic maintenance and redundancy and failover components.

II. EMAIL ARCHIVING

ESPA agrees with USAC's determination that archiving is ineligible for support under current program rules. However, ESPA comments that the distinction between email storage and email archiving is not clear, and urges USAC to clarify. ESPA proposes the following three criteria to assist USAC in formulation of its policy:

Account Status: To be considered storage, the user must be a current member of the organization. Former employees, students or library patrons must have their storage transitioned to archival form (see, "Time Frame.")

Time Frame: Storage is a limited duration, not to exceed 1 year, set by organizational policy. Archiving is long term, and may not expire.

Location: Storage must occur within the email solution (at the service provider or "on-site" at a district owned building). Archiving may occur anywhere.

INTRANET WEB HOSTING

ESPA disagrees with USAC's position that Intranet Web Hosting should be ineligible.

ESPA comments that schools have legally-mandated privacy requirements, and to require eligible entities to cost-allocate out that percentage of service dedicated to restricted, aka, password-protected, information significantly reduces the utility of the website in question, and makes the process more complex and burdensome. ESPA comments that the products necessary to implement a password-protected section on a website are generally included with the basic cost of the service, and any minimal cost that could be saved are likely far out-weighed by the administrative burden of removing them by cost allocation.

In addition to legal privacy requirements, EPSA notes that there are critical issues concerning the safety and security of students in school. Schools frequently use websites to highlight student achievements, sports, clubs, picnics, and other extracurricular activities, and may include identifying photographs. Schools need to be able to restrict access to this type of content to protect students from internet predators and other threats. The proposed change would undermine the important public policy goal of student safety.

ESPA comments that two of the stated goals of the program are to promote emerging technologies and technological neutrality, and yet this proposal by USAC seems to be at odds with these goals. Static web pages are outdated; schools and libraries are moving towards more fully-featured, interactive web sites that enable

the larger constituent community to access resources more quickly and easily, while protecting sensitive data. Additionally, there seems little functional difference between the ability to mass-email information and a restricted-access website, yet these changes propose to treat one of these as an eligible service, the other as ineligible.

ESPA also comments that greater clarity is needed when determining which applications are eligible for funding and which applications are not. For example, if a school wished to make use of a Java-based applet that counted the number of “hits” on their website, would USAC fund a service that allowed this level of functionality? If a school wished to publish their auditorium calendar, would that be permissible? In short, where is the line between small, “benign” applications and larger, prohibited applications?

In sum, ESPA comments that the ancillary costs of allowing restricted-access portions of a web site would allow applicants to better conduct their business and interact with their constituents, at little cost for a great gain. We urge the FCC to consider the matter carefully.

III. VIDEO ON-DEMAND SERVERS

ESPA comments that content storage, of all types except web, voice mail and email, is ineligible for support under current program rules. However, ESPA also comments that the storage costs associated with Video on Demand servers seem to be an excellent, natural delineation between the eligible, “conduit” functions and the ineligible, “storage” functions. ESPA disagrees with USAC’s Cost Allocation methodology which requires service providers and applicants to allocate a portion of the underlying server, rather than the simpler method of determining the “delta,” that is, the additional storage requirements above and beyond the basic server, to be the ineligible portion. ESPA comments that the proportional cost-allocation methodology currently in use is inherently inaccurate, and that any potential cost-savings to the program may be outweighed by the administrative burden to applicants, service providers, and program administrators.

VoIP SOFTWARE LICENSES

ESPA agrees with USAC's position in this matter, but also strongly urges the FCC to consider changing the categorization of recurring software licensing costs from to Internal Connections to Basic Maintenance. The Third Report and Order lists, as the definition of "Basic Maintenance":

"Basic maintenance services are "necessary" if, but for the maintenance at issue, the connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services without e-rate discounts."

While ESPA does not assert that a failure to pay a software license would "break" the system, non-payment of a software license would prevent the system from working (legally, not technically). ESPA comments that recurring yearly software licenses meet the standard of "necessary to function," and should therefore be included as Basic Maintenance.

IV. CONCLUSION

ESPA appreciates this opportunity to provide comments to the FCC and commends the FCC for this approach that allows constituents to comment on a draft ESL. We note that the FCC's Second Order in Docket 02-6 states that "[t]he Commission expects that this public notice [providing a final Eligible Services List] will be released on or before September 15 of each year." Since the adoption of the public comment approach, the dates of

release of the Eligible Services List have been October 5, 2004, November 18, 2005, and October 19, 2006.

Release of the final Eligible Services List well after the September 15 expectation means that USAC has limited time to provide further guidance and interpretation as part of its standard outreach to applicant and service provider representatives. Applicants are under pressure to amend RFPs and procurement processes to accommodate final E-rate eligibility standards. Service providers must adapt their marketing messages to incorporate the latest eligibility guidance. ESPA requests that closer adherence to the expected September 15 timeline for release of the final Eligible Services List be followed.

Respectfully submitted,

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